

Invitation to Comment

Title	Appellate Procedure: Record on Appeal (amend Cal. Rules of Court, rules 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861 and 8.862; revise forms APP-003 and APP-103 ¹)
Summary	<p>This proposal would make several changes to the rules relating to clerk's transcripts in civil and criminal appeals and appendixes in unlimited civil appeals. These changes include: (1) adding transcripts of electronic recordings offered into evidence by a party under rule 2.1040 to the list of documents that must be included in a clerk's transcript on appeal in a civil case; (2) clarifying that records from other appeals may be incorporated by reference in an appendix or, when there is a later appeal, in a clerk's or reporter's transcript, and establishing requirements for identifying parts of any record to be incorporated; (3) requiring that the cover of an appendix indicate if a party is incorporating by reference the record from another appeal; (4) adding certain diagnostic and psychological reports to the list of documents that must be included in the clerk's transcript when a defendant appeals in a felony or misdemeanor case; and (5) clarifying the handling of confidential documents in the clerk's transcripts in felony and misdemeanor appeals. This proposal would also revise <i>Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)</i>(form APP-003) to separate the request for transmittal of an administrative record from the section of the form on designating a clerk's transcript and would revise both APP-003 and the <i>Notice Designating Record on Appeal (Limited Civil Case)</i> (form APP-103) to reflect the changes to the rules on the contents of clerks' transcripts in civil appeals.</p>
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p><u>Including transcripts of electronic recordings offered into evidence under rule 2.1040 in the clerk's transcript</u> Rule 2.1040 provides that, unless otherwise ordered by the trial judge,</p>

¹ Rules 8.832, 8.861, and 8.862, which relate to appeals to the superior court appellate division in limited civil and misdemeanor cases, were adopted, and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) was approved by the Judicial Council on February 22, 2008, and will take effect on January 1, 2009. A copy of these rules can be accessed at <http://www.courtinfo.ca.gov/rules/amendments/jan2009.pdf>.

a party offering into evidence an electronic sound or sound-and-video recording must tender to the court a typewritten transcript of the electronic recording, and a copy of the transcript must be filed by the clerk and must be made part of the clerk's transcript in the event of an appeal. Rule 8.320(b), which addresses the contents of clerk's transcripts in felony appeals, lists transcripts of electronic recordings offered into evidence under rule 2.1040 among the documents that must be included in a clerk's transcript. However, rules 8.122 and 8.832, which address the contents of a clerk's transcript on appeal in unlimited and limited civil cases, respectively, do not list such transcripts among the documents that must be included in a clerk's transcript.

This proposal would add such transcripts to the list of required documents in a clerk's transcript on appeal in civil cases under both rules 8.122 and 8.832. Since, under rule 8.124(b), an appendix used in lieu of a clerk's transcript must include all items required to be included in a clerk's transcript under rule 8.122(b)(1), the proposed change would also mean that such transcripts of electronic recordings must be included in appendixes.

Forms for designating the record in civil cases

Appellant's Notice Designating Record on Appeal (Unlimited Civil Case) (form APP-003) and *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) are optional forms that appellants in unlimited and limited civil cases, respectively, can use to designate the record on appeal. These forms would be revised to reflect the proposed addition of transcripts of electronic recordings offered into evidence under rule 2.1040 to the list of documents that must be included in a clerk's transcript in civil appeals.

Current item 6 on form APP-003 is for requesting that an administrative record be transmitted to the reviewing court under rule 8.123. This item is presently located at the bottom of a page that generally addresses designation of a clerk's transcript. To clarify that a request to transmit an administrative record is separate from the designation of the clerk's transcript, this proposal would revise form APP-003 to move the item relating to the administrative record to the top of the page as new item 3 under a new, separate heading. A check box would also be added to this item, and to items 5 and 6 on form APP-003. Other non-substantive formatting changes would also be made to this form.

Records on appeal incorporated by reference

Rule 8.147, part of the rules on civil appeals in the Court of Appeal, addresses records in cases in which there is a later appeal. This rule currently permits parties in these appeals to incorporate by reference in a clerk's or reporter's transcript the record from a prior appeal in the same case. Subdivision (b)(1) provides that, in an appeal under rule 8.122² or 8.130,³ a party may incorporate by reference parts of a record in a prior appeal by specifying those parts in its designation of the record. In a more indirect way, rule 8.124, which addresses the use of appendixes in lieu of clerk's transcripts in unlimited civil cases, similarly permits the incorporation by reference of other records on appeal in an appendix. Subdivision (b)(2) provides that an appendix must not incorporate any document by reference "except the record on appeal in another case pending in the reviewing court or the record in a prior appeal in the same case." Thus, under this exception, an appendix may incorporate by reference the record in such other appeals.

This proposal would amend rule 8.147 to clarify its application to appeals in which a clerk's or reporter's transcript is being used. It would also amend rule 8.124 to more clearly and affirmatively state that the record in another appeal can be incorporated by reference in an appendix. In addition, both rules would be amended to indicate how parts of any record to be incorporated by reference are to be identified. Finally, to provide the reviewing court with notice that such a record is being incorporated by reference, this proposal would amend rule 8.124 to require that the cover of the appendix include a notice of any such incorporated record. This notice will alert the reviewing court clerk that the records in those other appeals should be retained and made accessible for the appeal in which the appendix is filed.

Clerk's transcripts in criminal appeals

Rules 8.320(b) and 8.861 list the documents that must be included in a clerk's transcript in a felony and a misdemeanor appeal, respectively. Currently, the documents listed in these rules do not include court-ordered diagnostic reports under Penal Code section 1203.03⁴ or psychological reports under Penal Code section 1369. If any such reports were ordered during the trial court proceedings, they are likely to be needed in the record on appeal. Since these documents are not automatically included in the clerk's transcript, counsel must currently make and the court must consider requests to augment the record on

² This rule addresses clerk's transcripts.

³ This rule addresses reporter's transcripts.

⁴ This section applies only in felony cases.

appeal in order to include these reports. These requests take time and resources for both the litigants and the courts. This proposal would eliminate the need for such augmentation requests by adding these reports to the documents that are automatically included in the clerk's transcript when the defendant is the appellant.

These diagnostic and psychological reports, as well as probation reports and certain other documents that are required to be included in the clerk's transcript, are required by law to be kept confidential. Currently, rule 8.336, relating to preparation of the clerk's transcript in felony appeals, addresses how the confidentiality of probation reports included in a clerk's transcript is to be maintained, but it does not address the handling of other confidential documents.

This proposal would expand rule 8.366's current provision on the handling of probation reports to address the handling of all confidential documents in the clerk's transcript. It would also add new provisions to rule 8.366 about access to confidential documents and how the index to the clerk's transcript must refer to these documents. These new provisions are modeled on provisions from rule 8.328, which addresses confidential records. In addition, this proposal would add a similar provision addressing the handling of confidential documents in the clerk's transcripts in misdemeanor appeals to rule 8.362.

Attachment

Rules 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861 and 8.862 of the California Rules of Court would be amended and forms APP-003 and APP-103 would be revised, effective January 1, 2009, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.122. Clerk's transcript

(a) * * *

(b) Contents of transcript

(1) The transcript must contain:

(A) The notice of appeal;

(B) Any judgment appealed from and any notice of its entry;

(C) Any order appealed from and any notice of its entry;

(D) Any notice of intention to move for a new trial, or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order, with supporting and opposing memoranda and attachments, and any order on such motion and any notice of its entry;

(E) Any notices or stipulations to prepare clerk's or reporter's transcripts or to proceed by agreed or settled statement; ~~and~~

(F) The register of actions, if any; and

(G) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 2.1040.

(2)–(4) * * *

(c)–(d) * * *

1 **Rule 8.124. Appendixes**

2
3 (a) * * *

4
5 (b) **Contents of appendix**

6
7 (1) * * *

8
9 (2) An appendix may incorporate by reference all or part of the record on appeal in
10 another case pending in the reviewing court or in a prior appeal in the same
11 case. The other appeal must be identified by its case name and number. If only
12 part of a record is being incorporated by reference, that part must be identified
13 by citation to the volume and page number of the record where it appears and
14 either the title of the document or documents or a description of the oral
15 proceedings to be incorporated. If the appendix incorporates by reference any
16 such record, the cover of the appendix must prominently display the notice
17 “Record in case number: _____ incorporated by reference” identifying the
18 number of the case in which the record is incorporated.

19
20 ~~(2)~~(3) An appendix must not:

21
22 (A)–(C) * * *

23
24 (D) Incorporate any document by reference except ~~the record on appeal in~~
25 ~~another case pending in the reviewing court or the record in a prior appeal~~
26 ~~in the same case as provided in (b)(2).~~

27
28 (3)–(5) * * *

29
30 (c)–(g) * * *

31
32 **Advisory Committee Comment**

33
34 **Subdivision (a).** * * *

35
36 **Subdivision (b).** Under subdivision (b)(1)(A), a joint appendix or an appellant's appendix must contain
37 any register of actions that the clerk sent to the parties under subdivision (a)(2). This provision is intended
38 to assist the reviewing court in determining the accuracy of the appendix. The provision is derived from
39 rule 30-1.3(a)(ii) of the United States Circuit Rules (9th Cir.).

40
41 Under subdivision (b)(2), all or part of a record in a prior appeal in the same case or another appeal in the
42 reviewing court can be incorporated by reference in an appendix. Both the index and a page in the body
43 of the appendix should identify the parts of any record incorporated by reference.

1 In support of or opposition to pleadings or motions, the parties may have filed a number of lengthy
2 documents in the proceedings in superior court, including, for example, declarations, memorandums, trial
3 briefs, documentary exhibits (e.g., insurance policies, contracts, deeds), and photocopies of judicial
4 opinions or other publications. Subdivision ~~(b)(2)(A)~~(b)(3)(A) prohibits the inclusion of such documents
5 in an appendix when they are not necessary for proper consideration of the issues raised in the appeal.
6 Even if a document is otherwise includable in an appendix, the rule prohibits the inclusion of any
7 substantial *portion* of the document that is not necessary for proper consideration of the issues raised in
8 the appeal. The prohibition is intended to simplify and therefore expedite the preparation of the appendix,
9 to reduce its cost to the parties, and to relieve the courts of the burden of reviewing a record containing
10 redundant, irrelevant, or immaterial documents. The provision is adapted from rule 30-1.4 of the United
11 States Circuit Rules (9th Cir.).

12
13 Subdivision ~~(b)(2)(B)~~(b)(3)(B) prohibits the inclusion in an appendix of transcripts of oral proceedings
14 that may be made part of a reporter's transcript. (Compare rule 8.130(e)(3) [the reporter must not copy
15 into the reporter's transcript any document includable in the clerk's transcript under rule 8.122].) The
16 prohibition is intended to prevent a party filing an appendix from evading the requirements and
17 safeguards imposed by rule 8.130 on the process of designating and preparing a reporter's transcript, or
18 the requirements imposed by rule 8.144(d) on the use of daily or other transcripts instead of a reporter's
19 transcript (i.e., renumbered pages, required indexes). In addition, if an appellant were to include in its
20 appendix a transcript of less than all the proceedings, the respondent would not learn of any need to
21 designate additional proceedings (under rule 8.130(a)(3)) until the appellant had served its appendix with
22 its brief, when it would be too late to designate them. Note also that a party may file a certified transcript
23 of designated proceedings instead of a deposit for the reporter's fee (rule 8.130(b)(3)).

24
25 **Subdivision (d).** * * *

26
27 **Subdivision (e).** * * *

28
29 **Subdivision (g).** * * *

30
31
32 **Rule 8.147. Record in multiple or later appeals in same case**

33
34 **(a)** * * *

35
36 **(b) Later appeal**

37
38 In an appeal in which the parties are using either a clerk's transcript under rule
39 8.122 or a reporter's transcript under rule 8.130:

- 40
41 (1) A party wanting to incorporate by reference all or parts of a record in a prior
42 appeal in the same case must specify those parts in its designation of the
43 record, with page numbers if available. The prior appeal must be identified by
44 its case name and number. If only part of a record is being incorporated by
45 reference, that part must be identified by citation to the volume and page
46 number of the record where it appears and either the title of the document or
47 documents or a description of the oral proceedings to be incorporated.

- 1
2 (2) A party wanting any incorporated parts of a prior record to be copied into the
3 later record must serve and file a notice specifying those parts and must deposit
4 the estimated copying cost within 10 days after the clerk mails notice of that
5 cost.
6

7 **Chapter 3. Criminal Appeals**

8
9 **Article 2. Record on Appeal**

10
11
12 **Rule 8.320. Normal record; exhibits**

13
14 (a) * * *

15
16 (b) **Clerk's transcript**

17
18 The clerk's transcript must contain:

19
20 (1)–(12) * * *

21
22 (13) And, if the appellant is the defendant:

23
24 (A) Any written defense motion denied in whole or in part, with supporting
25 and opposing memoranda and attachments;

26
27 (B) If related to a motion under (A), any search warrant and return and the
28 reporter's transcript of any preliminary examination or grand jury
29 hearing;

30
31 (C) Any document admitted in evidence to prove a prior juvenile
32 adjudication, criminal conviction, or prison term. ~~If a record was closed to~~
33 ~~public inspection in the trial court because it is required to be kept~~
34 ~~confidential by law, it must remain closed to public inspection in the~~
35 ~~reviewing court unless that court orders otherwise; and~~

36
37 (D) The probation officer's report; and

38
39 (E) Any court-ordered diagnostic or psychological report required under
40 Penal Code section 1203.03(b) or 1369.

41
42 (c)–(g) * * *

1
2 **Advisory Committee Comment**
3

4 **Subdivision (b)(13).** Rule 8.336(g) addresses the appropriate handling of confidential documents that
5 must be included in the clerk’s transcript under this rule, such as documents concerning prior juvenile
6 adjudication under (b)(13)(C), probation officers’ reports under (b)(13)(D), and diagnostic or
7 psychological reports under (b)(13)(E).
8
9

10 **Rule 8.336. Preparing, certifying, and sending the record**
11

12 **(a)–(f) * * ***
13

14 **(g) ~~Probation officer’s report~~ Confidential documents in the clerk’s transcript**
15

16 (1) Unless the reviewing court orders otherwise:
17

18 (A) If a document that is required to be included in the clerk’s transcript under
19 rule 8.320(b) was closed to public inspection in the trial court because it
20 is required to be kept confidential by law, it must remain closed to public
21 inspection in the reviewing court.
22

23 (B) Confidential material sent to the reviewing court may be examined only
24 by a reviewing court and parties and their attorneys who had access to the
25 material in the trial court.
26

27 (2) The A probation officer’s report, diagnostic report under Penal Code section
28 1203.03, or any other confidential document included in the clerk’s transcript
29 under rule 8.320(b) that was available to parties and their attorneys in the trial
30 court must appear in all copies of the appellate record. The reviewing court’s
31 copy of the ~~report~~ document must be placed in a sealed envelope marked
32 “CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT
33 ORDER—Probation Officer Report.” “Confidential—May Not Be Examined
34 Without Court Order” and the name of the document.
35

36 (3) Unless otherwise required under rule 8.328 or by court order, the alphabetical
37 and chronological indexes to the clerk’s transcript must include the
38 confidential document but list it as “Confidential—May Not Be Examined
39 Without Court Order” or the equivalent.
40

41 **(h) * * ***
42
43

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 2. Appeals and Records in Limited Civil Cases**

4
5 **Article 2. Record in Civil Appeals**

6
7
8 **Rule 8.832. Clerk’s transcript**

9
10 **(a) Contents of clerk’s transcript**

11
12 (1) The clerk’s transcript must contain:

13
14 (A) The notice of appeal;

15
16 (B) Any judgment appealed from and any notice of its entry;

17
18 (C) Any order appealed from and any notice of its entry;

19
20 (D) Any notice of intention to move for a new trial, or motion to vacate the
21 judgment, for judgment notwithstanding the verdict, or for
22 reconsideration of an appealed order, with supporting and opposing
23 memoranda and attachments, and any order on such motion and any
24 notice of its entry;

25
26 (E) The notice designating the record on appeal; and

27
28 (F) The register of actions, if any; and

29
30 (G) Any transcript of a sound or sound-and-video recording furnished to the
31 jury or tendered to the court under rule 2.1040.

32
33 (2)–(3) * * *

34
35 **(b)–(d) * * ***

1 Chapter 3. Appeals and Records in Misdemeanor Cases

2
3 Article 2. Record in Misdemeanor Appeals

4
5
6 **Rule 8.861. Contents of clerk’s transcript**

7
8 Except in appeals covered by rule 8.867 or when the parties have filed a stipulation under
9 rule 8.860(b) that any of these items is not required for proper determination of the
10 appeal, the clerk’s transcript must contain:

11
12 (1)–(11) * * *

13
14 (12) If the appellant is the defendant:

15
16 (A) Any written defense motion denied in whole or in part, with supporting and
17 opposing memoranda and attachments;

18
19 (B) If related to a motion under (A), any search warrant and return;

20
21 (C) Any document admitted in evidence to prove a prior juvenile adjudication,
22 criminal conviction, or prison term. ~~If a record was closed to public~~
23 ~~inspection in the trial court because it is required to be kept confidential by~~
24 ~~law, it must remain closed to public inspection in the appellate division~~
25 ~~unless that court orders otherwise; and~~

26
27 (D) The probation officer’s report; and

28
29 (E) Any court-ordered psychological report required under Penal Code section
30 1369.

31
32 **Advisory Committee Comment**

33
34 Rule 8.862(c) addresses the appropriate handling of confidential documents that must be included in the
35 clerk’s transcript under this rule, such as documents concerning prior juvenile adjudication under (12)(C),
36 probation officers’ reports under (12)(D), and psychological reports under (12)(E).

1 **Rule 8.862 Preparation of clerk’s transcript**

2
3 **(a)–(b) * * ***

4
5 **(c) Confidential documents in the clerk’s transcript**

6
7 **(1) Unless the appellate division orders otherwise:**

8
9 **(A) If a document that is required to be included in the clerk’s transcript under**
10 **rule 8.861 was closed to public inspection in the trial court because it is**
11 **required to be kept confidential by law, it must remain closed to public**
12 **inspection in the appellate division.**

13
14 **(B) Confidential material sent to the appellate division may be examined only**
15 **by the appellate division and parties and their attorneys who had access to**
16 **the material in the trial court.**

17
18 **(2) A probation officer’s report or any other confidential document included in the**
19 **clerk’s transcript under rule 8.861 that was available to parties and their**
20 **attorneys in the trial court must appear in all copies of the appellate record. The**
21 **appellate division’s copy of the document must be placed in a sealed envelope**
22 **marked with “Confidential—May Not Be Examined Without Court Order” and**
23 **the name of the document.**

24
25 **(3) Unless the appellate division orders otherwise, the alphabetical and**
26 **chronological indexes to the clerk’s transcript must include the confidential**
27 **document but list it as “Confidential—May Not Be Examined Without Court**
28 **Order” or the equivalent.**

29
30 **(e)(d) When preparation must be completed**

31 * * *

32
33
34 **(d)(e) Certification**

35 * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	Superior Court Case Number:
RE: Appeal filed on (<i>date</i>):	Court of Appeal Case Number (<i>if known</i>):
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases (form APP-001)</i> before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT

1. I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the trial court (*check a, b, c, d, or e and fill in any required information*):
- a. A clerk's transcript under rule 8.122 (*You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.*)
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript.
I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I am asking that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (*check (a) or (b)*):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use Application for Waiver of Court Fees and Costs (form FW-001) to prepare and file this application.*)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (*NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)
- d. An agreed statement under rule 8.134 (*You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).*)
- e. A settled statement under rule 8.137. (*You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).*)

RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT

2. I elect to proceed:
- a. WITHOUT a record of the oral proceedings in the trial court. I understand that without a record of the oral proceedings in the trial court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the trial court proceedings.

CASE NAME:	CASE NUMBER:
------------	--------------

- b. WITH the following record of the oral proceedings in the trial court:
- (1) A reporter's transcript under rule 8.130 (*You must fill out the reporter's transcript section on page 3 of this form.*)
 - (2) An agreed statement (*Check and complete either (a) or (b) below.*)
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137 (*You must attach the motion required under rule 8.137(a) to this form.*)

RECORD OF ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT.

3. I would like the clerk to transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the trial court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates

NOTICE DESIGNATING CLERK'S TRANSCRIPT

You must complete this section if you checked item 1.a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the trial court.

4. **Required documents.** The clerk will automatically include the following items in the clerk's transcript:
- a. Notice of appeal
 - b. Notice designating record on appeal (*this document*)
 - c. Judgment or order appealed from
 - d. Notice of entry of judgment (*if any*)
 - e. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
 - f. Ruling on one or more of the items listed in e.
 - g. Register of actions or docket
 - h. Any transcript furnished to the jury or tendered to the court under rule 2.1040.
5. **Additional documents.** (*If you want any documents from the trial court proceeding in addition to the items listed above to be included in the clerk's transcript, you must identify those documents here.*)

I would like the clerk to include in the transcript the following documents from the trial court proceeding (*You must identify each document you want included by its title and provide the date it was filed, if you know it.*):

Document Title and Description	Date of Filing
--------------------------------	----------------

- i.
- j.
- k.

See additional pages

CASE NAME:	CASE NUMBER:
------------	--------------

6. **Exhibits to be included in clerk's transcript.** I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court (*for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence*):

Exhibit Number	Description	Admitted (Yes/No)
----------------	-------------	-------------------

- a.
- b.
- c.

See additional pages

NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the trial court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

7. I request that the reporter(s) provide my copy of the reporter's transcript in computer-readable format. (*Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).*)

8. **Proceedings.** I would like the following proceedings in the trial court to be included in the reporter's transcript (*You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings.*):

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
------	------------	------------------	----------------------------	-----------------

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.

See additional pages

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF APPELLANT OR ATTORNEY)

Clerk stamps date here when form is filed.

Empty box for clerk stamping date.

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number:
Trial Court Case Name:

You fill in the appellate division case number (if you know it):

Appellate Division Case Number:

Instructions

- This form is only for choosing (“designating”) the record on appeal in a **limited civil case**.
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.
- This form can be attached to your notice of appeal. If it is not attached to your notice of appeal, you must serve and file this form within 10 days after you file your notice of appeal. **If you do not file this form on time, the court may dismiss your appeal.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center site at www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving.
- Take or mail the original completed form and proof of service on the other parties to the clerk’s office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

1 Your Information

a. Name of appellant (the party who is filing this appeal):

b. Appellant’s contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: () _____ E-mail (*optional*): _____

c. Appellant’s lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: _____ State Bar number: _____

Street address: _____
Street City State Zip

Mailing address (*if different*): _____
Street City State Zip

Phone: () _____ E-mail (*optional*): _____

Fax (*optional*): () _____

Trial Court Case Name: _____

Information About Your Appeal

- 2 On (fill in the date): _____ I/my client filed a notice of appeal in the trial court case identified in the box on page 1 of this form.

Record of the Documents Filed in the Trial Court

- 3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court (check a or b and fill in any required information):

- a. **Clerk’s Transcript.** (Fill out (1)–(4).) Note that, if the appellate division has adopted a local rule permitting this, the clerk may prepare and send the original court file to the appellate division instead of a clerk’s transcript.

- (1) **Required documents.** The clerk will automatically include the following items in the clerk’s transcript but you must provide the date each document was filed:

Document Title and Description	Date of Filing
(1) Notice of appeal	
(2) Notice designating record on appeal (this document)	
(3) Judgment or order appealed from	
(4) Notice of entry of judgment (if any)	
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)	
(6) Ruling on any item included under 5	
(7) Register of actions or docket	
(8) Any transcript furnished to the jury or tendered to the court under rule 2.1040.	

- (2) **Additional documents.** If you want any documents in addition to the required documents listed above to be included in the clerk’s transcript, you must identify those documents here.

- I would like the clerk to include in the transcript the following documents that were filed in the trial court. (Identify each document you want included by its title and provide the date it was filed, if you know it.)

Document Title and Description	Date of Filing
(1)	
(2)	
(3)	
(4)	
(5)	

- Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write “APP-103, item 3a(2).”



Trial Court Case Name: _____

3 a. (continued)

(3) Exhibits.

- I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court. (*For each exhibit, give the exhibit number (such as Plaintiff's #1 or Defendant's A) and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence. If the trial court has returned a designated exhibit to a party, the party who has that exhibit must deliver it to the trial court clerk as soon as possible.*)

Exhibit Number	Description	Admitted Into Evidence	
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."

(4) Payment for clerk's transcript. (Check a or b.)

- (a) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (b) I am asking that the clerk's transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (i) or (ii) and attach the checked document*):
 - (i) An order granting a waiver of the cost under rules 3.50–3.63
 - (ii) An application for a waiver of court fees and costs under rules 3.50–3.63 (use *Application for Waiver of Court Fees and Costs* (form FW-001)).

OR

- b. **Agreed statement.** (*You must complete item 5d below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in 3a(1) above and in rule 8.832 of the California Rules of Court.*)

Record of Oral Proceedings in the Trial Court

You do not have to provide the appellate division with a record of what was said in the trial court (this is called a record of the "oral proceedings"). But, if you do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 I elect (choose)/My client elects to proceed (*check a or b*):

- a. WITHOUT a record of the oral proceedings in the trial court (*skip 5*); *sign and date this form*). I understand that if I elect to proceed without a record of the oral proceedings in the trial court the appellate division will not be able to consider what was said during those proceedings in determining whether a legal error was made.

(*Write initials here*): _____



Trial Court Case Name: _____

4 (continued)

- b. WITH a record of the oral proceedings in the trial court (*complete item 5 below*). I understand that, if I elect (choose) to proceed WITH a record of the oral proceedings in the trial court, I have to choose the record I want to use and take the actions described below to make sure that this record is provided to the appellate division. I understand that if I do not take the actions described below and the appellate division does not receive this record, I am not likely to succeed in my appeal.

(Write initials here): _____

5 I want to use the following record of what was said in the trial court proceedings in my case (*check and complete only one of the following below—a, b, c, d, or e*):

- a. **Reporter’s Transcript.** *This option is available only if there was a court reporter in the trial court who made a record of what was said in court. Check with the trial court to see if there was a court reporter in your case before choosing this option. (Complete (1) and (2)):*

- (1) **Designation of proceedings to be included in reporter’s transcript.** I would like the following proceedings in the trial court to be included in the reporter’s transcript.

(You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings [for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions], and, if you know it, the name of the court reporter who recorded the proceedings.)

Date	Department	Description	Court Reporter’s Name
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

- Check here if you need more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write “APP-103, item 5a.”*

- (2) **Payment for reporter’s transcript.** I will pay the trial court clerk’s office for this transcript myself when I receive the court reporter’s estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the appellate division.

(Write initials here): _____

OR



Trial Court Case Name: _____

5 (continued)

- b. **Transcript From Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, it will not be prepared and provided to the appellate division.
- (2) I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.63
- (b) An application for a waiver of court fees and costs under rules 3.50–3.63 (*use Application for Waiver of Court Fees and Costs (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- c. **Copy of Official Electronic Recording.** *This option is available only if an official electronic recording was made of what was said in the trial court, the court has a local rule for the appellate division authorizing parties to use the official electronic recording itself as the record of the court proceedings, and all of the parties have agreed (stipulated) that they want to use the recording itself as the record of what was said in the case. Check with the trial court to see if an official electronic recording was made in your case before choosing this option. You must attach a copy of your agreement (stipulation) with the other parties to this notice. (Check and complete (1) or (2)):*
- (1) I will pay the trial court clerk for this copy of the recording myself when I receive the clerk's estimate of the costs of this copy. I understand that if I do not pay for this copy of the recording, it will not be prepared and provided to the appellate division.
- (2) I am asking that a copy of the recording be provided at no cost to me because I cannot afford to pay this cost. I have attached (*check (a) or (b) and attach the appropriate document*):
- (a) An order granting a waiver of the cost under rules 3.50–3.63
- (b) An application for a waiver of court fees and costs under rules 3.50–3.63 (*use Application for Waiver of Court Fees and Costs (form FW-001). The court will review this form to decide if you are eligible for a fee waiver.*)

OR

- d. **Agreed Statement.** I want to use an agreed statement (a summary of the trial court proceedings agreed to by the parties) as the record of what was said in my case. (*Check (1) or (2)*):
- (1) I have attached an agreed statement to this notice.
- (2) All the parties have agreed in writing (stipulated) to try to agree on a statement (*you must attach a copy of this agreement (stipulation) to this notice*). I understand that, within 30 days after I file this notice, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.



Trial Court Case Name: _____

5 (continued)

OR

e. **Statement on Appeal.** I want to use a statement on appeal (a summary of the trial court proceedings approved by the trial court) as the record of what was said in my case. (*Check (1) or (2)*):

(1) I have attached my proposed statement on appeal to this notice of appeal. (*If you are not represented by a lawyer in this appeal, you must use Proposed Statement on Appeal (Limited Civil Case) (form APP-104) to prepare and file this proposed statement. You can get a copy of form APP-104 at any courthouse or county law library or online at www.courtinfo.ca.gov/forms.*)

(2) I have NOT attached my proposed statement. I understand that I must serve and file this proposed statement in the trial court within 20 days of the date I file this notice and that if I do not file the proposed statement on time, the court may dismiss my appeal.

Date: _____

Type or print your name

▶ _____
Signature of appellant or attorney

Item SPR08-06 Response Form

Title: **Appellate Procedure: Record on Appeal** (amend Cal. Rules of Court, rules 8.122, 8.124, 8.147, 8.320, 8.336, 8.832, 8.861 and 8.862; revise forms APP-003 and APP-103)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*